IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.MC.No. 2941 of 2007()

CC.199/1999 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

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PETITIONER: ACCUSED:

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1. SKARIA, S/O. CHACKO,
   SUPERINTENDENT, CENTRAL EXCISE PREVENTIVE UNIT,
   MALAPPURAM.

2. GOPALAKRISHNAN, S/O. SHIVANANDAN,
   INSPECTOR, CENTRAL EXCISE, KOLLAM.

3. GOPALAKRISHNAN, S/O. GOPALAN NAIR,
   INSPECTOR, CENTRAL EXCISE, THRISSUR.

4. RAMUNNI NAIR, S/O. KUNJUNNI NAIR,
   INSPECTOR, SPECIAL CUSTOMS PREVENTIVE DIVISION,
   THALASSERY.

5. SACHITHRAN, S/O. LATE P. BHARATHAN,
   SIPOY, CENTRAL EXCISE, KOZHIKODE.

6. RAVEENDRAN, S/O. KUNJIRAMAN NAIR,
   SPECIAL CUSTOMS PREVENTIVE UNIT, KOZHIKODE.

7. SURENDRAN NAIR, S/O. K.GOPALAN NAIR,
   SIPOY, SPECIAL CUSTOMS PREVENTIVE UNIT,KOZHIKODE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE:

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1. THE SUB INSPECTOR OF POLICE,
   MANJERI POLICE STATION.

2. STATE, REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2941 of 2007

Dated this the 28th day of September 2007

O R D E R

The petitioners face indictment in a prosecution for the offences punishable inter alia under Section 326 I.P.C. The case was registered as early as in 1999. Trial is not complete. CW1, the injured was not available for trial. At long last, that CW1 appeared before the learned Chief Judicial Magistrate on 11/7/2007 in pursuance of a direction issued by this court on 9/7/2007 in I.A.No.9359/07 in W.P.C.No.9878/2006. That writ petition has nothing to do with this prosecution but the said CW1 was challenging an order passed under the COFEPOSA in the said writ petition. There was a contention that the witness had not appeared before the learned Magistrate in that case. It was in that situation that the interim order dated 9/7/07 was passed directing the said CW1 to appear before the learned Chief Judicial Magistrate, Manjeri on 11/7/2007. CW1 appeared before the court on that day. Actually the case was posted on that day for 313 examination. The petitioners/accused were

allegedly taken by surprise by the availability of CW1 for examination on that day. They therefore prayed for time to cross-examine CW1. Annexure 1 petition was filed for time to cross-examine the said CW1. By Annexure II order, the said petition was dismissed. The learned Chief Judicial Magistrate took note of the fact that in the interim order dated 9/7/2007, there was a direction by this court to that court to examine CW1 on 11/7/2007 itself. It was hence that the petition was dismissed.

2. The learned counsel for the petitioners submits that the learned Chief Judicial Magistrate did not realistically read and understand the direction dated 9/7/2007. The petitioners were not party to the said writ petition. They had no knowledge of the direction in that cases, the matter having been posted for 313 examination, the petitioners and their counsel were not ready to cross-examine CW1. In these circumstances, the learned counsel for the petitioners prays that Annexure II order may be set aside and the learned Chief Judicial Magistrate may be directed to grant the petitioners a further opportunity to cross-examine CW1.

3. In the circumstances of the case, I reckon the request of the learned counsel for the petitioners as absolutely reasonable. The petitioners were not parties to the writ petition and had no knowledge of the interim directions issued. In these circumstances, the presence of CW1 for examination was a bolt from the blue for them and their prayer for time to cross-examine CW1 does certainly appear to me to be fair and reasonable.

4. In the result, this Criminal Miscellaneous Case is allowed. The impugned order Annexure II is set aside. The learned Chief Judicial Magistrate shall give the petitioners one further opportunity to cross-examine CW1 on a date to be fixed by the learned Chief Judicial Magistrate.

5. This Criminal Miscellaneous Case is accordingly allowed to the above extent.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007